

1 CROSNER LEGAL, P.C.
2 Zachary M. Crosner (SBN 272295)
3 Chad A. Saunders (SBN 257810)
4 Craig W. Straub (SBN 249032)
5 9440 Santa Monica Blvd. Suite 301
6 Beverly Hills, CA 90210
7 Tel: (310) 496-5818
8 Fax: (310) 510-6429
9 zach@crosnerlegal.com
10 chad@crosnerlegal.com
11 craig@crosnerlegal.com

12 Attorneys for Plaintiff

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JINHUI KIM, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

WALMART INC.,

Defendant.

Case No.: 2:22-cv-08380-SB-PVC

**SECOND AMENDED CLASS
ACTION COMPLAINT**

Judge: Hon. Stanley Blumenfeld Jr.
Courtroom: 6C

Case Filed: October 6, 2022
FAC Filed: December 15, 2022
Trial Date: March 25, 2024

JURY TRIAL DEMANDED

1 Plaintiff Jinhui Kim (“Plaintiff”) brings this action against Defendant Walmart
2 Inc. (“Defendant” or “Walmart”), individually and on behalf of all others similarly
3 situated, and alleges upon personal knowledge as to Plaintiff’s acts and experiences,
4 and, as to all other matters, upon information and belief, including an investigation
5 conducted by Plaintiff’s attorneys.

6 **NATURE OF THE ACTION**

7 1. This is a consumer protection action brought by Plaintiff, on behalf of
8 herself and all other similarly situated California consumers, for damages related to
9 Defendant’s continuing sale to consumers of its Spark Toys which are intended for
10 use by children under the age of three that can be placed in child’s mouth and contain
11 high levels of the phthalate called Di-n-octyl phthalate (“Spark Toys” or “Products”).

12 2. Defendant has and continues to manufacture, distribute, sell, and offer to
13 sell the Spark Toys including the Spark Toys purchased by Plaintiff Kim to consumers
14 containing extremely high levels of the phthalate Di-n-octyl phthalate (“DNOP”).
15 Plaintiff Kim purchased the Spark Squishy Animals Toys (UPC code 8449576183)
16 and Spark Animal Set Toys (UPC code 8449575749).

17 3. The Spark Toys purchased by Plaintiff Kim are labeled for children ages
18 “2+.” The Spark Toys also include the Spark Farm Book with Puppets which is
19 labeled for children “0+.” Formal discovery is likely to reveal additional Spark Toys
20 which are intended for use by children under the age of three and can be placed in a
21 child’s mouth that contain illegal levels of DNOP.

22 4. The Spark Toys are approximately three inches in length and contain
23 small protruding appendages (i.e., ears, legs, tails) which can easily be placed in a
24 child’s mouth.

25 5. Consumers purchase the Spark Toys reasonably believing that they are
26 non-toxic, safe, and comply with California’s safety standards. However, the Products
27 contain dangerously high levels of DNOP in violation of California state law.
28

8. Plaintiff brings this action individually, and on behalf of all California purchasers of the Products, for violations of the California Consumer Legal Remedies Act (“CLRA”), Civil Code §§ 1750, *et seq.* and breach of California’s express warranty common law.

9. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because this is a class action in which: (1) there are over 100 members in the proposed class; (2) members of the proposed class have a different citizenship from Defendant; and (3) the claims of the proposed class members likely exceed \$5,000,000 in the aggregate, exclusive of interest and costs. The \$5 million requirement is possibly met due to the fact that Plaintiff is seeking punitive damages and attorneys' fees and costs. Defendant alleges that this Court has jurisdiction under 28 U.S.C. § 1332(a) because there is diversity of citizenship and the amount in controversy exceeds \$75,000. *See* Dkt. No. 1 (Notice of Removal).

10. This Court has personal jurisdiction over Defendant because Defendant conducts and transacts business in the State of California, contracts to supply goods within the State of California, and supplies goods within the State of California. Defendant has intentionally availed itself of the markets within California through its advertising, marketing, and sales of Spark Toys to consumers, including Plaintiff. Walmart maintains approximately 320 retail stores in California. Walmart's business partner related to the manufacture, design, testing, and distribution of the Spark Toys is Boley Corporation. Boley Corporation is headquartered in Chino, California. The label of the Spark Toys states that Walmart is the distributor.

11. Venue is proper in this District because one or more of the occurrences of the wrongful conduct occurred and continues to occur, in this District, and Defendant conducted and continues to conduct, business in this District. Plaintiff purchased the Spark Toys in this District.

PARTIES

12. Plaintiff Jinhui Kim is an individual consumer who, at all times relevant to this action, was a citizen of and resided in California. Before purchasing Defendant's Spark Toys, Plaintiff saw Defendant's representations by reading the label of the "Spark Create Imagine Animal Set 2+" 6-piece product and "Spark Create Imagine Squishy Animals 2+" 4-piece product, including that the Products were for children ages "2+." In reliance on the labeling claims that the Products were for children under the age of three and on the belief that the products were safe for children under the age of three, Plaintiff purchased the Spark Toys at a Walmart retail store located at 1827 Walnut Grove Ave., Rosemead, California in August 2022. Relying on the Product's representations, Plaintiff paid approximately \$3 for the Spark Imagine Squishy Animals toys and approximately \$5 for the Spark Imagine Animal Set toys. In total, Plaintiff spent approximately \$14 on Defendant's Spark Toys. Had Plaintiff known the truth—that the Products do not comply with California

1 law and are harmful to children under the age of three—she would not have purchased
2 the Products. Plaintiff did not receive the benefit of the bargain, because Defendant’s
3 Products do not and cannot be legally purchased. By purchasing the unlawful and
4 dangerous Products, Plaintiff suffered injury-in-fact and lost money.

5 13. Defendant Walmart Inc. is a publicly-traded Delaware corporation, with
6 a principal place of business in Bentonville, Arkansas. Defendant manufactures,
7 markets, and advertises and distributes the Products throughout the United States,
8 including in California. Defendant manufactured, marketed, and sold the Spark Toys
9 during the Class Period. The planning and execution of the advertising, marketing,
10 labeling, packaging, testing, and/or business operations concerning the Spark Toys
11 were carried out by Defendant.

12 14. Walmart sells the Spark Toys under the brand name “Spark Create
13 Imagine” which is Walmart’s trademarked brand. The Products’ labels state that
14 Walmart distributes the Products.

15 **FACTUAL BACKGROUND**

16 **A. Defendant’s Advertising and Labeling of the Spark Toys**

17 15. Defendant’s Spark Toys are sold nationwide at Walmart retail chains. On
18 the packaging of the Spark Toys Defendant advertises that they are safe for children
19 “2+” or “0+”:



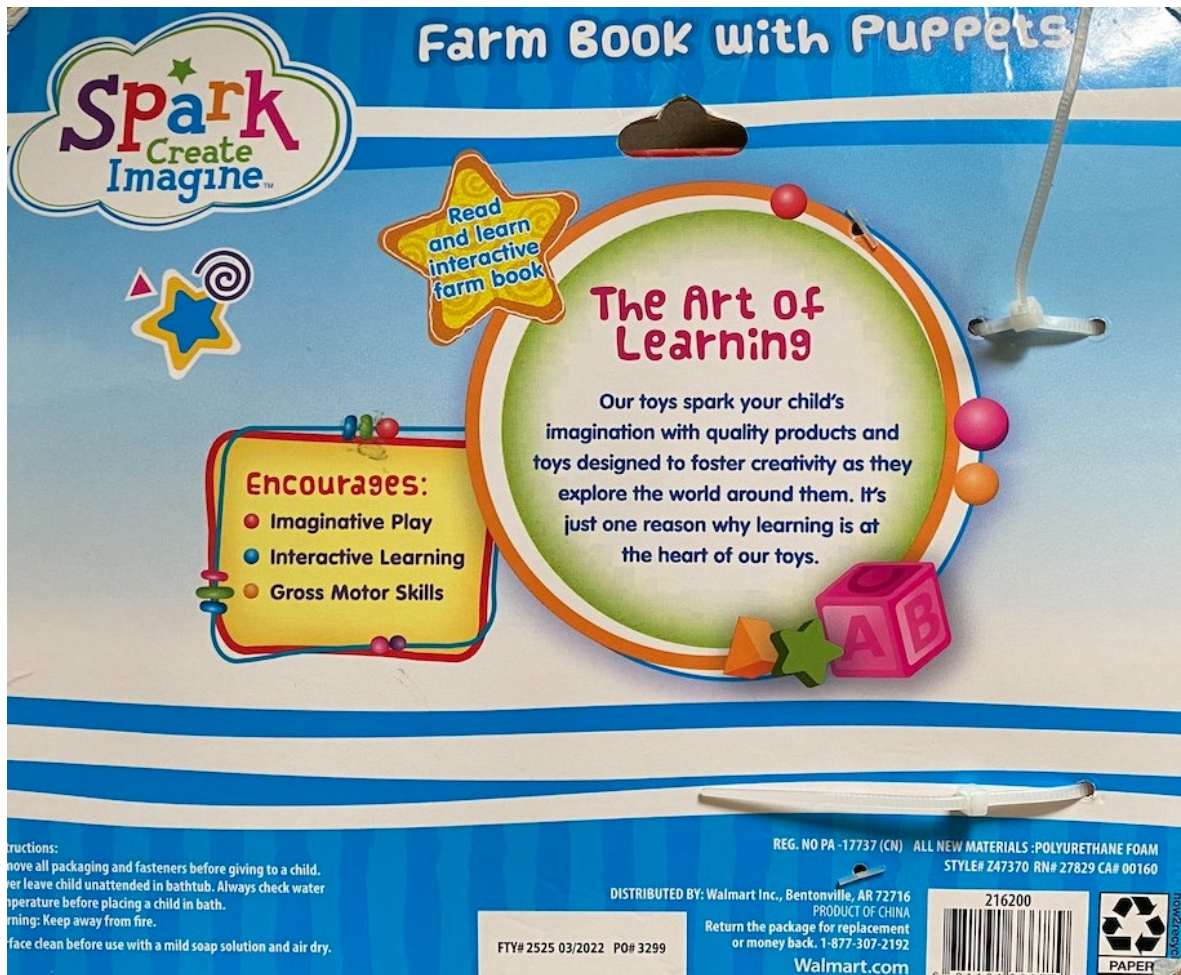
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VC



16. Defendant reinforces that the products are safe for young children by stating that the Products encourage “Fine Motor Skills, Sensory Development, and Holding”:



1 17. Similarly, on Defendant's website, walmart.com, Defendant advertises
2 that the Products are safe for children "2 Years & Up" which is highlighted below:

Brand	Features
Spark Create Imagine	Multicolored assortment of animal figurines
Assembled Product Weight	Brand
0.5 lb	Spark Create Imagine
Age Range	Manufacturer Part Number
2 Years & Up	75749
Gender	Gender
Unisex	Unisex
Manufacturer Part Number	Age Range
76183	2 to 4 years

15 **B. The Dangers of Phthalates**

16 18. Phthalates, or esters of phthalic acid, are environmental pollutants.
17 Phthalates are plasticizers which make polymer materials elastic to make the final
18 product cheaper and easier to produce. Phthalates do not form covalent bonds with
19 the polymers with which they are mixed, and thus, can migrate to products surface
20 and which can be released to the environment. Phthalates enter a child's system
21 through the digestive system, through contact with skin, and through the licking and
22 sucking of objects made of plastics. Young children are at risk of excessive exposure
23 to phthalates because they often place non-consumable objects in the mouth.

24 19. Phthalates which the scientific community and regulatory agencies have
25 expressed concern for causing negative health effects are di-(2-ethylhexyl) phthalate
26 (DEHP), dibutyl phthalate (DBP), benzyl butyl phthalate (BBP), diisononyl phthalate
27 (DINP), diisodecyl phthalate (DIDP), and DNOP.

20. Phthalates negatively impact the growth and development of the human fetus, infants, and toddlers. They can cause a dysfunction of the hormonal system by disturbing the synthesis, concentration, and action of natural hormones responsible for the growth and development of sex organs. Phthalates have been found to affect estrogen and androgen receptor; exert a negative effect on androgens including hypospadias (abnormal location of the male external urethral orifice on the ventral side of the penis); impair sperm function by lowering sperm counts and sperm motility increasing the risk of impairment of sperm function and mobility; and reduce testosterone production. Phthalates have also been found to negatively impact a child's immune system causing an increased risk of asthma and allergies.

21. As such, the California legislature has prohibited the use of phthalates, including DNOP, in concentrations exceeding 0.1 percent by mass in any toy or childcare product intended for use by a child under the age of three years if the product can be placed in the child's mouth. Heath & Saf. Code § 108937. California Assembly Bill 1108 was passed on January 1, 2009, and specifically states that "[t]here is extensive scientific literature reporting the hormone-disrupting effects phthalates and substantial evidence that levels of the phthalates of concern are found in humans at levels associated with adverse effects." Cal. A.B. No.1108 at §1(b) (Jan 1, 2009).

22. Likewise, the European Commission Regulation prohibits the use of phthalates, including DNOP, at concentrations above 0.1 percent by mass from being used in toys and childcare products which can be placed in the mouth of a child.

23. Vermont's Department of Public Health issued a report in November 2018. It found that DNOP "can affect how babies develop as well as harm the liver, kidney, thyroid and immune system in humans." It also noted that DNOP exposure occurs from skin contact with consumer products that contain DNOP.

24. The American Academy of Pediatrics ("AAP") states that phthalates are some of the most concerning additives in child products because they "may affect

1 male genital development, increase childhood obesity, and contribute to
2 cardiovascular disease.” The AAP has also published findings that “several studies
3 have reported detectable concentrations of phthalate metabolites in children’s urine.
4 Concerns over phthalate toxicity have emerged because of growing evidence of
5 adverse impacts on endocrine, reproductive, immunologic and neurologic system
6 function in animals and humans.” The AAP warns that “early childhood [is] thought
7 to be the most sensitive time windows for potential adverse health impacts given the
8 rapid period of cell differentiation and organ development.”

9 25. Silva and co-authors (2021) published research examining 471 children
10 in a population-based and cross-sectional study. The authors examined phthalate and
11 bisphenol urinary concentrations and concluded that “DNOP metabolites are
12 associated with overweight and an adverse cardiovascular profile in childhood.”¹ The
13 authors note that the scientific evidence has shown that phthalates are considered
14 endocrine disrupting chemicals that affect childhood health and children are more
15 vulnerable to exposure to these chemicals than adults. “As a result of the widespread
16 use of phthalate metabolites and bisphenols-related products, children can be exposed
17 to these potential harmful chemicals through different pathways, such as ingestion,
18 inhalation, and dermal contact. Phthalates and bisphenols may interfere with
19 endocrine processes, resulting in a deviation from the normal homeostatic control that
20 may lead to an adverse cardiovascular profile.”

21 26. Despite these prohibitions and known dangers to children, Defendant has
22 sold and continues to sell the Products which contain extremely high levels of DNOP.
23 Instead of warning consumers and parents, Defendant advertises that the Spark Toys
24 are to be used by children under the age of three.

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27 ¹ Silva C.V.C et al. Phthalate and Bisphenol Urinary Concentrations, Body Fat
28 Measures, and Cardiovascular Risk Factors in Dutch School-Age Children. Obesity.
2021.29:409-417.

C. Certified Laboratory Testing Confirms the Spark Toys Contain DNOP Levels which Exceed California’s Legal Limit

27. Certified testing by an accredited laboratory conducted tests of the Spark Toys. The certified lab utilized the Environmental Protection Agency’s Method 8270C (“EPA Method 8270C”). EPA Method 8270C is a reliable testing method for the determination of DNOP in samples. EPA Method 8270C includes DNOP in its target analyte list, and the method specifies the use of gas chromatography/mass spectrometry (GC/MS) to detect and quantify DNOP in the samples. The GC/MS instrument is capable of separating individual compounds based on their physical and chemical properties and detecting them based on their unique mass-to-charge ratio.

28. The laboratory tests concluded that the Spark Toys contain between 3.84 to 4.19 percent by mass DNOP. This is approximately forty times California’s legally allowed amount of DNOP. The certified lab conducted the tests on August 12, 2022.

THE IMPACT OF DEFENDANT’S WRONGFUL CONDUCT

29. Defendant has ignored California law and the scientific evidence demonstrating that products containing high levels of phthalates, including DNOP, are not safe for children. Yet, Defendant advertises Spark Toys as safe for children under the age of three when they, in fact, contain unlawful levels of DNOP. Consumers, like Plaintiff, have relied on Defendant’s misrepresentation that Spark Toys are safe for children under the age of three. Defendant’s omissions and misrepresentations have caused numerous consumers to purchase the Products for their young children, relying on Defendant’s false claims that Spark Toys are safe for children.

30. As the distributor and marketer of Spark Toys, Defendant possesses specialized knowledge regarding its content and effects of its ingredients, and Defendant is in a superior position to know whether Spark Toys are safe for children

1 under the age of three.

2 31. Specifically, Defendant knew, but failed to disclose, or should have
3 known, that its Spark Toys are a product that is unlawfully sold, as it contains
4 unlawful concentrations of DNOP, and may harm children.

5 32. Defendant knew, but failed to disclose, or should have known, that Spark
6 Toys are toxic for children because the science has determined that DNOP is harmful
7 to children, as explained above.

8 33. Plaintiff and the Class members have been and will continue to be
9 deceived or misled by Defendant's false and deceptive representations that Spark
10 Toys are safe for children.

11 34. Defendant's representations and omissions were a material factor in
12 influencing Plaintiff's and the class members' decision to purchase Defendant's
13 Spark Toys. Defendant's conduct has injured Plaintiff and the class members because
14 Spark Toys are not safe for young children as they contain unlawful concentrations
15 of DNOP. Spark Toys retail for approximately \$3-\$5 for a set of toys. Had Plaintiff
16 and other reasonable consumers known this, they would not have purchased Spark
17 Toys or would not have paid the prices they paid. Furthermore, had Plaintiff and other
18 reasonable consumers known that Spark Toys are not safe for children and cannot be
19 legally sold, they would not have purchased Spark Toys or would not have paid the
20 prices they paid.

21 **CLASS ACTION ALLEGATIONS**

22 35. Plaintiff brings this class action Federal Rules of Civil Procedure 23(b)(3)
23 on behalf of the following on behalf of the following class:

24 All persons in California who purchased Spark Toys for personal use
25 until the date notice is disseminated.

26 (the "Class").
27
28

36. Excluded from the from the Class are: (i) Defendant and its officers, directors, and employees; (ii) any person who files a valid and timely request for exclusion; and (iii) judicial officers and their immediate family members and associated court staff assigned to the case.

37. Plaintiff reserves the right to amend or otherwise alter the class definition presented to the Court at the appropriate time, or to propose or eliminate sub-classes, in response to facts learned through discovery, legal arguments advanced by Defendant, or otherwise.

38. The Class is appropriate for certification because Plaintiff can prove the elements of the claims on a classwide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

39. Numerosity: Class Members are so numerous that the joinder of all members is impracticable. Plaintiff believes that there are thousands of consumers who are Class Members described above who have been damaged by Defendant's deceptive and misleading practices.

40. Commonality and Predominance: There is a well-defined community of interest in the common questions of law and fact affecting all Class Members. The questions of law and fact common to the Class Members which predominate over any questions which may affect individual Class Members include, but are not limited to:

- a. Whether Defendant is responsible for the conduct alleged herein which was uniformly directed at all consumers who purchased the Products;
- b. Whether Defendant's misconduct set forth in this Complaint demonstrates that Defendant engaged in unfair, fraudulent, or unlawful business practices with respect to the advertising, marketing, and sale of the Products;
- c. Whether Defendant made false and/or misleading statements concerning the Products that were likely to deceive the public;

d. Whether Plaintiff and the Class are entitled to money damages under the same causes of action as the other Class Members.

41. Typicality: Plaintiff is a member of the Class Plaintiff seeks to represent. Plaintiff's claims are typical of the claims of each Class Member in that every member of the Class was susceptible to the same deceptive, misleading conduct and purchased the Products. Plaintiff is entitled to relief under the same causes of action as the other Class Members.

42. Adequacy: Plaintiff is an adequate Class representative because Plaintiff's interests do not conflict with the interests of the Class Members Plaintiff seeks to represent; the CLRA and breach of warranty claims are common to all other members of the Class, and Plaintiff has a strong interest in vindicating Plaintiff's rights; Plaintiff has retained counsel competent and experienced in complex class action litigation and Plaintiff intends to vigorously prosecute this action. Plaintiff has no interests which conflict with those of the Class. The Class Members' interests will be fairly and adequately protected by Plaintiff and proposed Class Counsel. Defendant has acted in a manner generally applicable to the Class, making relief appropriate with respect to Plaintiff and the Class Members. The prosecution of separate actions by individual Class Members would create a risk of inconsistent and varying adjudications.

43. The Class is properly brought and should be maintained as a class action because a class action is superior to traditional litigation of this controversy. A class action is superior to the other available methods for the fair and efficient adjudication of this controversy because:

a. The joinder of hundreds of individual Class Members is impracticable, cumbersome, unduly burdensome, and a waste of judicial and/or litigation resources;

- b. The individual claims of the Class Members may be relatively modest compared with the expense of litigating the claim, thereby making it impracticable, unduly burdensome, and expensive to justify individual actions;
- c. When Defendant's liability has been adjudicated, all Class Members' claims can be determined by the Court and administered efficiently in a manner far less burdensome and expensive than if it were attempted through filing, discovery, and trial of all individual cases;
- d. This class action will promote orderly, efficient, expeditious, and appropriate adjudication and administration of class claims;
- e. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action;
- f. This class action will assure uniformity of decisions among Class Members;
- g. The Class is readily definable and prosecution of this action as a class action will eliminate the possibility of repetitious litigation;
- h. Class Members' interests in individually controlling the prosecution of separate actions is outweighed by their interest in efficient resolution by single class action; and
- i. It would be desirable to concentrate in this single venue the litigation of all plaintiffs who were induced by Defendant's uniform false advertising to purchase the Products.

44. Unless the Class is certified, Defendant will retain monies that were taken from Plaintiff and Class members as a result of Defendant's wrongful conduct.

COUNT I

Violation of Consumer Legal Remedies Act (“CLRA”)

Civil Code §§ 1750, *et seq*

45. Plaintiff re-alleges and incorporates by reference all allegations set forth in the preceding paragraphs as if fully set forth verbatim herein.

46. Plaintiff brings this claim individually and on behalf of the Class against Defendant.

47. At all times relevant hereto, Plaintiff and members of the Class were “consumer[s],” as defined in Civil Code section 1761(d).

48. At all relevant times, Defendant constituted a “person,” as defined in Civil Code section 1761(c).

49. At all relevant times, the Products manufactured, marketed, advertised, and sold by Defendant constituted “goods,” as defined in Civil Code section 1761(a).

50. The purchases of the Products by Plaintiff and members of the Class were and are “transactions” within the meaning of Civil Code section 1761(e).

51. Defendant disseminated, or caused to be disseminated, through its advertising—that the Products are safe for children under the age of three and are lawfully sold in California which they are not because the Products contain unlawful levels of DNOP and are dangerous to young children. Defendant’s representations and/or omissions violate the CLRA by:

- (a) Defendant misrepresented the source, sponsorship, approval, or certification of the Products (Civil Code § 1770(a)(2));
 - (b) Defendant represented that the Products have approval, characteristics, uses or benefits that they do not have (Civil Code § 1770(a)(5));
 - (c) Defendant has falsely represented that the Products are of a particular standard, quality, or grade, which they are not (Civil Code § 1770(a)(7));
- and

1 (d) Defendant advertised the Products with an intent not to sell the Products
2 as advertised (Civil Code § 1770(a)(9)).

3 52. Defendant violated the CLRA because the Products are not safe for
4 children and cannot be lawfully sold in California. Defendant knew, should have
5 known, and/or recklessly disregarded that its Products contain unlawful levels of
6 DNOP and can harm children, and that the labeling and advertising claims are illegal.

7 53. Defendant's actions as described herein were done with conscious
8 disregard of Plaintiff's rights and were wanton and malicious.

9 54. Defendant's wrongful business practices constituted, and constitute, a
10 continuing course of conduct in violation of the CLRA since Defendant is still
11 representing that its Products have characteristics that they do not have.

12 55. Plaintiff and members of the Class could not have reasonably avoided
13 such injury. Plaintiff and members of the Class were unaware of the existence of the
14 facts that Defendant suppressed and failed to disclose, and Plaintiffs and members of
15 the Class would not have purchased the Products and/or would have purchased them
16 on different terms had they known the truth.

17 56. Plaintiff and members of the Class suffered harm as a result of
18 Defendant's violations of the CLRA because they relied on Defendant's
19 representations and material omissions in deciding to purchase the Products. The
20 representations and material omissions were a substantial factor in deciding the
21 purchase of the Products. The representations and omissions were material because a
22 reasonable consumer would consider it important in deciding whether to purchase the
23 Products. An omission that relates to a safety hazard is material.

24 57. Pursuant to Civil Code section 1782, on August 15, 2022, Plaintiff
25 notified Defendant in writing by certified mail of the alleged violations of the CLRA
26 and demanded that Defendant rectify the problems associated with the actions
27 detailed above and give notice to all affected consumers of its intent to so act.
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1 Defendant has failed to rectify or agree to rectify the problems associated with the
2 actions detailed herein and give notice to all affected consumers within 30 days of the
3 date of written notice pursuant to § 1782 of the CLRA. Accordingly, Plaintiff seeks
4 actual, punitive, and statutory damages, as appropriate.

5 58. As a direct and proximate result of Defendant's misconduct in violation
6 of the CLRA, Plaintiff and members of the Class were harmed in the amount of the
7 purchase price they paid for the Products. Further, Plaintiff and members of the Class
8 have suffered and continue to suffer economic losses and other damages including,
9 but not limited to, the amounts paid for the Products, and any interest that would have
10 accrued on those monies, in an amount to be proven at trial. Accordingly, Plaintiff
11 seeks a monetary award for violation of the CLRA in the form of damages to
12 compensate Plaintiff and the Class for said monies.

13 59. Defendant's unfair, fraudulent, and unlawful conduct described herein
14 constitutes malicious, oppressive, and/or fraudulent conduct warranting an award of
15 punitive damages as permitted by law. Defendant's misconduct is malicious as
16 Defendant acted with the intent to cause Plaintiff and consumers to pay for Products
17 that they were not, in fact, receiving. Defendant willfully and knowingly disregarded
18 the rights of Plaintiff and consumers as Defendant was aware of the probable
19 dangerous consequences of its conduct and deliberately failed to avoid misleading
20 consumers, including Plaintiff. Defendant's misconduct is oppressive as, at all
21 relevant times, said the conduct was so vile, base, and/or contemptible that reasonable
22 people would look down upon it and/or otherwise would despise such corporate
23 misconduct. Said misconduct subjected Plaintiff and consumers to cruel and unjust
24 hardship in knowing disregard of their rights. Defendant's misconduct is fraudulent
25 as Defendant, at all relevant times, intentionally misrepresented and/or concealed
26 material facts with the intent to deceive Plaintiff and consumers. The wrongful
27 conduct constituting malice, oppression, and/or fraud was committed, authorized,
28

1 adopted, approved, and/or ratified by officers, directors, and/or managing agents of
2 Defendant.

3 60. Pursuant to § 1780(d) of the CLRA, attached as **Exhibit 1** is an affidavit
4 showing that this action was commenced in a proper forum.

5 **COUNT II**

6 **Breach of Express Warranty**

7
8 61. Plaintiff and Class Members reallege and incorporate by reference each
9 allegation set forth above as if fully set forth herein.

10 62. Plaintiff brings this claim individually and on behalf of members of the
11 Class against Defendant.

12 63. Defendant promised and expressly warranted that the Products are safe
13 for children under the age of three. Every Product sold to Plaintiff and the members
14 of the Class came in a container with the written representation on the front that it is
15 safe for children under the age of three.

16 64. Defendant was provided timely pre-suit notice of the breach of express
17 warranty. *See supra* at ¶ 56.

18 65. These promises and affirmations of fact constitute express warranties that
19 became part of the basis of the bargain between Plaintiff and the members of the
20 Class, on the one hand, and Defendant, on the other.

21 66. All conditions precedent to Defendant's liability under the contract have
22 been performed by Plaintiff and the Class.

23 67. Defendant has breached the terms of its express warranties by failing to
24 provide Products that are safe for children under the age of three.

25 68. As a direct and proximate result of Defendant's breach of express
26 warranty, Plaintiff and members of the Class were harmed in the amount of the
27 purchase price they paid for the Products. Further, Plaintiff and members of the Class
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1 have suffered and continue to suffer economic losses and other damages including,
2 but not limited to, the amounts paid for the Products, and any interest that would have
3 accrued on those monies, in an amount to be proven at trial. Accordingly, Plaintiff
4 seeks a monetary award for breach of warranty in the form of damages to compensate
5 Plaintiff and the Class for said monies.

6 69. Plaintiff seeks punitive damages pursuant to this cause of action for
7 breach of warranty on behalf of Plaintiff and the Class. Defendant's unfair, fraudulent,
8 and unlawful conduct described herein constitutes malicious, oppressive, and/or
9 fraudulent conduct warranting an award of punitive damages as permitted by law.
10 Defendant's misconduct is malicious as Defendant acted with the intent to cause
11 Plaintiff and consumers to pay for Products that they were not, in fact, receiving.
12 Defendant willfully and knowingly disregarded the rights of Plaintiff and consumers
13 as Defendant was aware of the probable dangerous consequences of its conduct and
14 deliberately failed to avoid misleading consumers, including Plaintiff. Defendant's
15 misconduct is oppressive as, at all relevant times, said conduct was contemptible that
16 reasonable people would look down upon it and otherwise would despise such
17 misconduct. Said misconduct subjected Plaintiff and consumers to cruel and unjust
18 hardship in knowing disregard of their rights. Defendant's misconduct is fraudulent
19 as Defendant, at all relevant times, intentionally misrepresented and/or concealed
20 material facts with the intent to deceive Plaintiff and consumers. The wrongful
21 conduct constituting malice, oppression, and/or fraud was committed, authorized,
22 adopted, approved, and/or ratified by officers, directors, and/or managing agents of
23 Defendant.

24 **JURY DEMAND**

25 70. Plaintiff demands a trial by jury on all issues so triable.
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CROSNER LEGAL, P.C.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, requests for judgment as follows:

(a) Declaring this action to be a proper class action and certifying Plaintiff as the representative of the Class, and Plaintiff's attorneys as Class Counsel to represent members of the Class;

(b) An order declaring Defendant's conduct violates the statutes referenced herein;

(c) Awarding monetary damages, including treble damages;

(e) Awarding punitive damages;

(f) Awarding Plaintiff and the Class and the Class Members their costs and expenses incurred in this action, including the reasonable allowance of fees for Plaintiff's attorneys and experts, pre-and post-judgment interest on any amounts awarded, and reimbursement of Plaintiff's expenses; and

(g) Granting such other and further relief as the Court may deem just and proper.

Dated: March 30, 2023

CROSNER LEGAL, P.C.

By: /s/ Craig W. Straub
Zachary M. Crosner
Chad A. Saunders
Craig W. Straub

Attorneys for Plaintiff